



WSSFC 2025

Substantive Track – Session 7

Considerations for (No Longer) Cohabiting Couples

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About the Presenters...

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CONSIDERATIONS FOR (NO LONGER) COHABITATING PARTNERS

by

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I. Overview

More couples today are choosing to live together without marrying, and this trend has significant legal implications when those relationships end. While Wisconsin law does not recognize common law marriage, courts have developed equitable doctrines such as unjust enrichment and implied contract to address property disputes between former intimate partners who have resided together. These former partners may assert contractual claims where there is evidence of an express or implied agreement regarding finances and property ownership. These claims often arise in situations where one party contributed financially to real estate titled in the other's name, or where assets were jointly titled but the parties cannot agree on how to divide or allocate the value of those accounts and real estate.

The absence of a marriage certificate does not bar recovery, but it does complicate the analysis since family law statutes governing property division are inapplicable. There are substantial differences in the rights and legal standard for recovery between non-married partners versus the rights and presumptions of equal division between married parties in divorce. As the number of unmarried couples continues to rise, so too will the need for lawyers to understand the number of – limited – claims available to these parties when their relationship ends.

II. Types of Legal and Equitable Claims

There are no legal or equitable claims in Wisconsin that are specific to only remedies between former intimate partners. Instead, the former partners must apply general legal and equitable claims available in a variety of contexts to the partner's prior relationship. The case law makes it clear that the remedies arise out of a joint partnership, generally requiring a commingling of financial contributions and benefits, that give rise to a cause of action. These remedies are not based on the intimacy or sexual relationship of the parties, but how they conducted their financial

affairs, held title, and a mutual understanding of the division of assets if the parties were to end their relationship.

The following are the most common types of legal causes of action that may be available to non-married parties at the dissolution of their cohabitation and relationship:

A. Unjust Enrichment.

By far, the most utilized cause of action for unmarried partners is a claim of unjust enrichment. The claim allows one former partner to receive an interest or compensation for the assets that are titled in the name of the other former partner. Unjust enrichment claims between cohabitating parties have been recognized in Wisconsin law, primarily through the landmark case of *Watts v. Watts*, which established that unmarried cohabitants may pursue claims for unjust enrichment when one party retains an unreasonable amount of property acquired through the efforts of both. Subsequent cases have refined the application of this principle, emphasizing the need for a mutual undertaking or joint enterprise that results in the accumulation of assets. Courts have consistently required proof of specific contributions that directly led to an increase in wealth or property, and have rejected claims based solely on the existence of a romantic relationship or general services provided during cohabitation.

B. Implied Contract

An implied contract requires mutual intention to contract, which can be inferred from the conduct, words, or course of dealing between the parties. The Supreme Court of Wisconsin in *Theuerkauf v. Sutton* emphasized that an implied contract arises only under circumstances showing mutual intent, and the parties must objectively manifest their agreement through external expressions rather than undisclosed intentions. *Theuerkauf v. Sutton*, 102 Wis.2d 176 (1981). Additionally, the court in *Watts v. Watts* held that public policy does not preclude an unmarried cohabitant from asserting a contract claim against the other party, provided the claim exists independently of the sexual relationship and is supported by separate consideration.

Courts have recognized implied contracts in situations where one party provides valuable services or contributions during the relationship, and the other party benefits from them. For example, in *Watts v. Watts*, the plaintiff alleged that she quit her job, abandoned career training, performed housekeeping, child-rearing, and business services without compensation, and cohabited with the defendant for over 12 years. The couple held joint bank accounts, made joint purchases, filed joint tax returns, and presented themselves as husband and wife on legal documents. These facts were sufficient to state a claim for damages resulting from the breach of an implied contract to share property accumulated through their joint efforts *Watts v. Watts*, 137 Wis.2d 506 (1987). Similarly, in *Ward v. Jahnke*, the plaintiff established an unjust enrichment claim by demonstrating that she took primary responsibility for living expenses to enable the defendant to save for a house, and the court recognized that her contributions created a basis for recovery under an implied contract or unjust enrichment *Ward v. Jahnke*, 220 Wis.2d 539 (1998).

While courts have recognized implied contracts between cohabitants, there are limitations. In *Lawlis v. Thompson*, the court held that unmarried cohabitants do not have rights resembling marital rights upon termination of their relationship unless there is an express or implied agreement regarding the sharing or division of assets. *Lawlis v. Thompson*, 137 Wis.2d 490 (1987).

C. Partition

If the former partners jointly own real estate that lists both of their names on the deed, a former partner may seek to have the house sold or receive his or her share of the equity awarded to him or her in a partition action.

Under Wisconsin law, a person with an interest in real property held jointly or in common with others has the right to bring a partition action unless prohibited by statute or agreement. Wisconsin Statute § 842.02(1) codifies this right, stating that such a person "may sue for judgment partitioning such interest unless an action for partition is prohibited elsewhere in the statutes or by agreement between the parties for a period not to exceed 30 years." This statutory right reflects the common law principle that partition is a remedy available to co-owners of property. *Mueller v. Larson*, 2022 WI App 42 (2022).

Partition actions are equitable in nature, meaning that courts aim to achieve fairness between the parties. Courts are not limited to statutory remedies and may fashion equitable solutions, such as private sales, to address the specific circumstances of a case. *Schmit v. Klumphyan*, 264 Wis.2d 414 (2003).

Partition actions are inherently equitable, and courts have broad discretion to ensure fairness. Courts may consider factors such as the interests of lienholders, the feasibility of physical division, and the potential prejudice to any party. For instance, Wisconsin Statute § 842.14(3) provides that existing liens on undivided interests remain in effect but are limited to the share assigned to the party against whom the lien exists. Courts may also order compensation between parties to achieve equality in partition if physical division is not feasible. Wis. Stat. § 842.14).

In *Schmit v. Klumphyan*, the court emphasized that partition actions allow trial courts to fashion remedies that meet the needs of specific cases, including private sales or other equitable solutions. *Schmit v. Klumphyan*, 264 Wis.2d 414 (2003)). Similarly, in *Jezo v. Jezo*, the court reiterated that the goal of partition actions is to do justice between the parties. *Jezo v. Jezo*, 23 Wis.2d 399 (1964).

D. Conversion

The legal elements of a conversion claim in Wisconsin are well-established and require proof of the following: (1) the defendant intentionally controlled or took property belonging to the plaintiff; (2) the defendant controlled or took the property without the plaintiff's consent or lawful authority; and (3) the defendant's actions seriously interfered with the plaintiff's right

to possess the property. These elements are consistently articulated in Wisconsin case law, including. *Bruner v. Heritage Companies*, 225 Wis. 2d 728, 736, 593 N.W.2d 814 (Ct. App. 1999)

The Wisconsin Supreme Court has clarified that conversion applies to personal property, including money, when there is wrongful control or interference with the owner's possessory rights. In *Schara v. Thiede*, the court defined conversion as "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein" *Schara v. Thiede*, 58 Wis.2d 489 (1973). This principle applies equally to disputes between former cohabitants or partners when one party wrongfully retains or controls personal property belonging to the other.

Wisconsin courts have consistently held that wrongful or unlawful intent is not required to establish conversion. It is sufficient that the defendant intended to deal with the property in a way that seriously interfered with the owner's possessory rights, even if the defendant was unaware of the owner's rights. This principle was articulated in *Methodist Manor Health Center, Inc. v. Py*, where the court emphasized that conversion liability arises from the defendant's actions, not their intent *Methodist Manor Health Center, Inc. v. Py*, 307 Wis.2d 501 (2008)).

When the defendant initially lawfully possesses the property, a demand for its return and a subsequent refusal are necessary to establish conversion. This requirement was discussed in *Production Credit Ass'n of Madison v. Nowatzski*, where the court held that a rightful owner must prove a demand for the return of the property and the defendant's refusal to comply.

E. Pet Custody Disputes

Disputes over pet ownership are becoming increasingly common as more couples cohabit without marrying and then separate. Companion animals are treated as personal property under Wisconsin law, meaning courts generally apply property principles rather than say custody standards or a best interests analysis. Former partners often seek legal remedies through replevin actions, small claims, or by asserting equitable ownership interests when both contributed to the acquisition or care of the pet.

These cases can be fact-intensive, with courts examining who purchased the animal, who paid veterinary expenses, whose name is on licensing records, and who provided the majority of care. Some parties also attempt to frame their claims in equity—such as unjust enrichment—where one party disproportionately invested in the pet's welfare.

Although the law does not recognize "pet custody," courts are increasingly sensitive to the emotional value of animals and may fashion remedies accordingly. Lawyers handling these matters must balance strict property law with the reality that, for many clients, pets are closer to children than property.

III. The Five Foundational Cases to Know for Unmarried Partners at Dissolution of their Relationship

1. Watts v. Watts

The case *Watts v. Watts*, 137 Wis. 2d 506, 405 N.W.2d 303 (1987), decided by the Supreme Court of Wisconsin, addressed the legal claims arising from the dissolution of a 12-year nonmarital cohabitation relationship between Sue Ann Watts and James Watts. The court reversed the circuit court's dismissal of the plaintiff's amended complaint, holding that she had stated claims upon which relief could be granted under several legal theories, including unjust enrichment, breach of contract, and partition. The case is significant for its recognition of equitable remedies in the context of nonmarital cohabitation.

(a) Background and Procedural History

Sue Ann Watts and James Watts cohabited from 1969 to 1981 in a relationship resembling a marriage. They held themselves out as husband and wife, shared a surname, filed joint tax returns, and maintained joint bank accounts. During this time, Sue Ann contributed significantly to the household and James's business, Watts Landscaping, through homemaking, childcare, and business-related services. The relationship ended in 1981, and Sue Ann alleged that James refused to share the wealth accumulated during their cohabitation, despite his representations that she would share equally in the property.

Sue Ann filed a complaint seeking an accounting of James's assets and a determination of her share of the property accumulated during their relationship. She based her claims on five legal theories: (1) equitable division of property under Wis. Stat. § 767.255; (2) estoppel to deny the applicability of § 767.255; (3) breach of express or implied-in-fact contract; (4) unjust enrichment and constructive trust; and (5) partition under statutory and common law principles. The circuit court dismissed the complaint, reasoning that § 767.255 did not apply to unmarried persons and that the legislature, not the courts, should address property disputes arising from nonmarital cohabitation.

(b) Legal Analysis and Holdings

(1) Applicability of Wis. Stat. § 767.255

The Supreme Court agreed with the circuit court that § 767.255, which governs property division in divorce or legal separation, does not apply to unmarried cohabitants. The court emphasized that the legislature intended this statute to address property division within the context of marriage and declined to extend its application to nonmarital relationships.

(2) Contract Claims

The court held that Sue Ann had sufficiently pleaded claims for breach of express or implied-in-fact contracts. Wisconsin law recognizes the importance of freedom of contract, and agreements between unmarried cohabitants are enforceable if they are independent of the sexual relationship and supported by separate consideration. Sue Ann alleged that she quit her job and contributed to the household and business based on James's promise to provide for her and share the accumulated wealth. These allegations were sufficient to state a claim for breach of contract.

(3) Unjust Enrichment and Constructive Trust

The court recognized that Sue Ann had stated a claim for unjust enrichment, which requires proof of three elements: (1) a benefit conferred on the defendant by the plaintiff; (2) the defendant's appreciation or knowledge of the benefit; and (3) the defendant's acceptance or retention of the benefit under circumstances making it inequitable to retain it. The court noted that Sue Ann's contributions to the household and business increased the couple's assets, and it would be unjust for James to retain all the accumulated wealth. The court also held that a constructive trust could be imposed if Sue Ann proved unjust enrichment and a confidential relationship or unconscionable conduct.

(4) Partition

The court held that Sue Ann had stated a claim for partition of real and personal property under Wis. Stat. §§ 820.01 and 842.02(1) and common law principles. Partition is an equitable remedy available to co-owners of property, regardless of marital status. Sue Ann alleged that she and James jointly acquired property during their relationship, and these allegations were sufficient to proceed with a partition claim.

(c) Broader Implications

The court rejected the argument that recognizing equitable remedies for unmarried cohabitants would undermine the institution of marriage. It emphasized that courts have long resolved property and contract disputes between unmarried persons and that public policy does not preclude such claims. The court clarified that its decision did not create new rights for cohabitants but merely applied existing legal principles to the facts of the case.

(d) Outcome

The Supreme Court reversed the circuit court's dismissal of Sue Ann's complaint and remanded the case for further proceedings. It held that her claims for breach of contract, unjust enrichment, and partition were legally cognizable and should proceed to trial.

This case established a significant precedent in Wisconsin, affirming that unmarried cohabitants may seek equitable remedies for property disputes arising from their relationships, provided the claims are based on recognized legal principles such as contract or unjust enrichment.

2. Ulrich v. Zemke

The case *Ulrich v. Zemke*, 2002 WI App 246, 258 Wis. 2d 180, 654 N.W.2d 458, decided by the Court of Appeals of Wisconsin on September 19, 2002, addresses issues of unjust enrichment and property division following the end of a nonmarital cohabitation relationship. The court reversed in part and remanded the circuit court's judgment, finding that the lower court applied an improper legal standard to the unjust enrichment claim. Below is a detailed summary of the case.

(a) Background and Procedural History

Susan Ulrich and Glenn Zemke cohabited from November 1989 to January 1997 in Friendship, Wisconsin, during which they raised two children together and shared living expenses. They acquired three parcels of real estate: their residence (Homestead), a property on Buttercup Avenue (Buttercup), and a parcel on Badger Road (Badger). While the properties were titled differently—some jointly and others solely in Zemke's name—both parties contributed financially and through labor to their acquisition and improvement.

After their separation, Ulrich initiated an action for unjust enrichment, seeking a division of the real and personal property. The circuit court awarded Ulrich the Homestead and Buttercup properties but required her to pay an equalization payment of \$36,043 to Zemke. However, the court rejected Ulrich's claim to the Badger property, awarding it solely to Zemke on the grounds that Ulrich failed to demonstrate a "shared enterprise" justifying her claim to that property.

Ulrich appealed, arguing that the circuit court applied an improper legal standard to her unjust enrichment claim and made erroneous factual findings regarding property values and the equalization payment.

(b) Legal Issues and Analysis

The appellate court agreed with Ulrich that the circuit court erred in its analysis of the unjust enrichment claim. Under Wisconsin law, an unjust enrichment claim requires proof of three elements: (1) a benefit conferred on the defendant by the plaintiff, (2) the defendant's appreciation or knowledge of the benefit, and (3) the defendant's acceptance or retention of the benefit under circumstances making it inequitable to retain it without payment. In the context of nonmarital cohabitation, the court must determine whether the parties engaged in a joint enterprise to accumulate assets, which would require equitable division of those assets.

The circuit court improperly analyzed Ulrich's claim on an asset-by-asset basis rather than considering the overall scope of the parties' relationship and whether it constituted a joint enterprise. The appellate court emphasized that the proper standard requires examining the totality of the circumstances, including whether the parties contributed property and services to a shared enterprise that produced an increase in wealth. The court cited *Watts v. Watts*, 137 Wis. 2d 506, 405 N.W.2d 303 (1987), which established that equity principles demand fair treatment of parties in a joint enterprise.

(c) Factual Findings and Equalization Payment

Ulrich also challenged the circuit court's factual findings regarding the value of the properties and the calculation of the equalization payment. The appellate court addressed several specific points:

1. **Mortgage Balance on Badger:** The circuit court found that the Badger property was subject to a \$42,350 mortgage, but both parties testified that the balance at the time of their separation was \$32,000. The appellate court instructed the circuit court to use the \$32,000 figure on remand, with discretion to adjust it if any part of the increase was attributable to debts for which Ulrich was also responsible.
2. **Proceeds from Property Sales:** The court found that proceeds from the sale of two parcels of Badger before the parties' separation were reinvested into the joint enterprise and did not need to be considered in the equalization payment. However, proceeds from a third parcel sold after the separation (\$11,500) were retained by Zemke and should be added to the value of Badger for equitable distribution.
3. **Methodology for Equalization Payment:** Ulrich argued that the circuit court's methodology for calculating the equalization payment was unclear. The appellate court reviewed the record and found that the court's calculations were supported by evidence but required adjustment to account for the Badger property.

The appellate court reversed the circuit court's judgment awarding Zemke sole ownership of the Badger property and remanded the case for further proceedings. On remand, the circuit court was directed to apply the proper legal standard for unjust enrichment, divide the Badger property equitably, and recalculate the equalization payment accordingly. The judgment was affirmed in all other respects.

3. Waage v. Borer

The case *Waage v. Borer*, decided by the Court of Appeals of Wisconsin on October 12, 1994, addresses the legal standards for unjust enrichment claims in the context of nonmarital cohabitation. The court reversed a jury verdict awarding damages to Borer, finding that her claim did not meet the legal standard for unjust enrichment established in *Watts v. Watts*, 137 Wis. 2d 506, 405 N.W.2d 303 (1987). The decision clarifies the elements required for unjust enrichment claims between unmarried cohabitants and emphasizes the necessity of proving joint accumulation of assets during the relationship.

(a) Background of the Case

Dale E. Bower and Donald Waage cohabited for approximately eight years without being married. During this time, Bower performed various domestic tasks, including housekeeping, cooking, and childcare, and made interest-free loans to Waage, which he repaid. The couple kept their finances and property separate throughout their relationship. Bower testified that she provided these services in the hope of marriage, although no formal engagement occurred. Waage purchased a diamond engagement ring and wedding band at one point, but the relationship ended before marriage, and Bower took the rings with her when she moved away.

Waage sued Bower for conversion of the rings, and Bower counterclaimed, alleging unjust enrichment based on her uncompensated domestic services. At trial, Bower calculated the value of her services at \$6 per hour, totaling approximately \$25,000 over eight years. The jury found Waage unjustly enriched and awarded Bower \$25,000 in damages.

(b) Legal Standards for Unjust Enrichment

The court analyzed whether Bower's claim satisfied the legal standard for unjust enrichment established in *Watts v. Watts*. Under *Watts*, an unjust enrichment claim requires proof of three elements: (1) an accumulation of assets, (2) acquired through the joint efforts of the claimant and the other party, and (3) retained by the other party in an unreasonable amount.. The *Watts* decision emphasized that equity principles prevent one party from retaining all assets acquired through joint efforts while the other party receives no share.

(c) Application of the *Watts* Standard

The court held that Bower's claim failed to meet the Watts standard because she presented no evidence of joint accumulation of assets during the relationship. While Bower argued that Waage benefited from her domestic services, the court clarified that such services alone do not constitute the type of "benefit" contemplated under *Watts*. The court stated that unjust enrichment claims in nonmarital cohabitation cases require a link between the services provided and the accumulation of wealth or assets during the relationship..

The court further noted that recognizing Bower's claim would effectively revive the abolished cause of action for breach of promise to marry, which Wisconsin law eliminated in 1959 under Wis. Stat. § 768.01. Bower's testimony that she provided services "out of caring" and without expectation of compensation undermined her claim, as *Watts* does not support recovery for services provided in contemplation of marriage absent evidence of joint asset accumulation.

The court reversed the trial court's judgment, holding that the evidence, even when viewed in the light most favorable to Bower, did not satisfy the Watts standard for unjust enrichment. The

decision underscores the limited scope of unjust enrichment claims in nonmarital cohabitation cases and reinforces the requirement of joint asset accumulation as a critical element.

4. Ward v. Jahnke

The case *Ward v. Jahnke*, 220 Wis. 2d 539, 583 N.W.2d 656 (Ct. App. 1998), decided by the Court of Appeals of Wisconsin, addresses a claim of unjust enrichment arising from a long-term cohabitation relationship. Sandra K. Ward brought the claim against Dennis Jahnke after their twelve-year relationship ended, seeking compensation for her contributions to their shared living arrangements, which she argued enabled Jahnke to accumulate wealth in the form of equity in a house. The court affirmed the jury's finding of unjust enrichment but reversed the damages award and remanded for a new trial on damages.

Ward and Jahnke cohabited from 1983 to 1995, during which time they maintained separate finances and did not hold themselves out as husband and wife. Early in their relationship, Jahnke moved into Ward's apartment, where Ward paid most of the living expenses, including rent, utilities, and food, while Jahnke occasionally contributed. Ward testified that this arrangement was part of a mutual plan to save for a house, with her covering expenses so Jahnke could accumulate savings for a down payment. In 1986, Jahnke purchased a house, using approximately \$11,000 he had saved for the down payment. The house was titled solely in Jahnke's name, and he paid all mortgage and tax expenses. Ward continued to contribute to household expenses, such as utilities and groceries, but did not pay rent.

After their relationship ended, Ward claimed that Jahnke had been unjustly enriched by her financial contributions, which enabled him to save for the house. A jury awarded Ward \$45,000, representing half of the equity in the house. Jahnke appealed, arguing that Ward failed to meet the legal standard for unjust enrichment and that the damages award was excessive.

The court analyzed Ward's unjust enrichment claim under the framework established in *Watts v. Watts*, 137 Wis. 2d 506, 405 N.W.2d 303 (1987). To succeed on an unjust enrichment claim, a plaintiff must prove three elements: (1) a benefit conferred on the defendant by the plaintiff, (2) appreciation or knowledge by the defendant of the benefit, and (3) acceptance or retention of the benefit under circumstances making it inequitable for the defendant to retain it.

The court affirmed the jury's finding that Jahnke was unjustly enriched during the period when Ward paid most of the couple's living expenses in the apartment. The court concluded that Ward's financial contributions were part of a mutual undertaking to save for a house, satisfying the *Watts* criteria for unjust enrichment. Jahnke's accumulation of \$11,000 for the down payment was deemed a benefit conferred by Ward, and retaining this benefit without compensating her was inequitable.

However, the court found that Ward's claim failed for the period after the house was purchased. During this time, the couple maintained separate finances, and there was no evidence of a shared enterprise or mutual effort toward accumulating assets. Ward's payment of utilities and groceries was not linked to an increase in the house's equity, which was attributed to market factors rather

than her contributions. The court emphasized that unjust enrichment claims require proof of a mutual undertaking and contributions directly tied to asset accumulation.

The court reversed the \$45,000 damages award, concluding that it was excessive and unsupported by evidence of a shared enterprise after the house purchase. The case was remanded for a new determination of damages limited to the period when Ward's contributions enabled Jahnke to save for the down payment.

Jahnke also argued that the verdict violated public policy by placing Ward in a better position than if they had been married and divorced. The court rejected this argument, noting that unjust enrichment claims are grounded in principles of equity and restitution, not marital status. Public policy does not preclude recovery for contributions made independently of a sexual relationship.

The judgment was affirmed in part, reversed in part, and remanded for a new trial on damages. The court upheld the finding of unjust enrichment for the period when Ward paid most of the couple's living expenses but limited her recovery to contributions directly tied to the accumulation of the down payment.

5. Sands v. Menards

In *Debra K. Sands v. John R. Menard, Jr.*, et al., 2017 WI 110 (Wis. Sup. Ct.), Debra Sands and John R. Menard, Jr. entered into a romantic relationship in late 1997, and Sands alleges that from about 1998 until their split in 2006, they cohabitated. During that period, Sands claims she performed a wide range of business, legal, advisory, and personal services for Menard and his affiliated companies—for example contributing ideas for product lines and store layouts, advising on marketing, supervising residences, and helping acquire and manage assets—on the understanding that Menard would grant her ownership interests or compensatory share in his businesses. Menard and his entities dispute several elements: whether there was a promise to share in profits/assets, and whether they ever lived together.

(a) Procedural History

Sands initiated suit in 2008 asserting various claims, including unjust enrichment (in a form similar to *Watts v. Watts*) premised on alleged joint enterprise, among others. The defendants moved for summary judgment (and partial summary judgment), arguing among other things that Sands had failed to plead sufficient facts to establish a joint enterprise, that she could not show her contributions increased assets in a way that would support her claim. The lower courts granted summary judgment in favor of the Menard respondents.

(b) Relevant Issue:

Whether Sands alleged sufficient facts to establish an unjust enrichment claim under *Watts v. Watts*, i.e. whether there was a joint enterprise with expectation to share profits and losses, accumulation of assets, etc.

The Wisconsin Supreme Court, in a 5-2 decision, affirmed the summary judgment dismissing Sands' claims. Specifically:

Sanders failed to allege facts that, if accepted, would establish a joint enterprise under *Watts*—no showing of expectation of equal profit and loss, or that assets were accumulated jointly with that expectation.

Summary judgment was appropriately granted on Sands' claims against the trustees.

IV. Practical Tips and Considerations

1. Cost

Cases between former unmarried partners involving unjust enrichment, conversion, or implied contract claims are notoriously expensive to litigate. Unlike divorce proceedings, there are no statutory presumptions governing property division, maintenance, or ownership interests to guide the court; instead, every element must be established from the ground up. These claims are highly fact-intensive, requiring detailed proof of contributions, intent, ownership, and benefit conferred—often spanning years of financial and personal interactions. Because the facts are rarely documented with the same rigor as marital finances, formal discovery is almost always necessary, including subpoenas for banking, tax, and business records, as well as depositions of the parties and third parties. The absence of legal presumptions also means that summary judgment is difficult to obtain, pushing most cases toward trial or complex settlement negotiations. Clients are often unprepared for the scope and cost of such litigation, as the evidentiary burdens and need for expert testimony can rival or exceed the expense of a contested divorce. For practitioners, managing client expectations and emphasizing early case assessment is essential in this challenging area of practice.

2. Equitable is not necessarily equal.

Litigation between unmarried partners presents unique challenges because the law provides no presumptions comparable to those found in divorce. In a divorce action, Wisconsin statutes presume an equal division of marital property, and courts assume that each spouse contributed to the accumulation of assets, whether directly or indirectly. By contrast, an unmarried partner pursuing unjust enrichment or implied contract claims has no presumption of entitlement to 50 percent of the other partner's property. Remedies in these cases are rarely equal and are instead based on the claimant's ability to prove specific financial or non-financial contributions to the accumulation of wealth. The sole exception to this framework arises when both parties are named as equal owners on a deed; however, even in that circumstance, partition actions are governed by equitable and statutory principles, and courts frequently deviate from an equal division. The focus is therefore on tracing contributions—financial, labor, or otherwise—often across many years of an intimate relationship where recordkeeping is informal or nonexistent. This evidentiary burden creates significant unpredictability in outcomes, making these cases more complex, fact-driven, and costly to litigate than traditional divorce proceedings.

3. Civil Courts with Juries

When representing clients in legal or equitable claims between unmarried partners, counsel must recognize that these are civil actions, not family law proceedings, and therefore carry the right to a jury trial. This distinction is critical, as family law practitioners—accustomed to bench trials in divorce cases—may not be as well prepared to frame arguments, present evidence, and craft jury instructions for a lay audience. The unpredictability of a jury’s reaction to intimate financial and personal details further complicates strategy. For this reason, attorneys should consider whether arbitration may better serve the parties’ interests. Arbitration offers privacy for sensitive personal and financial matters that would otherwise become public record in court. It also provides a more cost-effective, efficient, and informal resolution, while still ensuring finality. In evaluating these cases, counsel must balance the potential advantages of a jury trial with the risks and burdens it presents, and should proactively advise clients about the strategic benefits of arbitration as an alternative forum.

4. Discovery Intensive

Cases involving claims of unjust enrichment or implied contract between former unmarried partners are invariably discovery intensive. Because there are no statutory presumptions—such as those that exist in divorce—each element of the claim must be proven through a detailed record of the parties’ financial and personal contributions. This requires extensive document discovery, including bank statements, tax returns, business records, receipts, and other financial data spanning years of cohabitation. Equally important are depositions and testimony aimed at establishing the parties’ past conduct, statements, and intent regarding ownership and sharing of assets. The evidentiary focus is not only on what money was contributed, but also on how the parties understood and relied upon each other’s contributions in building wealth or acquiring property. As a result, counsel should anticipate broad and often contentious discovery disputes, significant attorney time reviewing and analyzing records, and the likelihood that experts may be needed to trace assets or value contributions. These burdens make such cases complex, fact-driven, and costly, with discovery serving as the central battleground for establishing or defeating the claims.

5. Sample Deposition Questions for Plaintiff’s Counsel.

1. Please describe the time period during which you and my client lived together. Provide approximate start and end dates, and whether you considered yourselves to be continuously cohabiting.
2. How would you characterize the nature of your relationship with my client while you lived together?
3. How were household expenses—such as mortgage or rent, utilities, and groceries—paid while you lived with my client? Did you keep any records of these payments?

4. What specific contributions did you personally make toward those household expenses? Do you have bank records, receipts, or other documents to confirm those contributions?
5. What contributions did my client make toward those same expenses? Would you agree that my client regularly contributed significant sums toward maintaining the household?
6. Did you and my client ever reach an agreement, formal or informal, about how to divide or share household expenses? Was that agreement ever reduced to writing, or was it based on your mutual understanding?
7. During the time you lived together, did you and my client acquire any significant property or assets? Which of those assets were purchased with joint funds or contributions from both of you?
8. Whose name appeared on the title, deed, or registration of that property? Was the decision about title placement discussed with my client?
9. Did you believe my client had an ownership interest in property titled solely in your name? What did you say to my client about how you viewed his or her interest in that property?
10. Did my client contribute financially to property or assets that were titled only in your name? Please identify specific contributions such as mortgage payments, improvements, or maintenance.
11. Did you and my client ever discuss long-term financial planning, such as retirement?
12. What was your understanding of how you and my client would support each other in retirement? Did you expect that both of you would share in each other's wealth at that time?
13. Did you make financial decisions based on the understanding that you and my client would share resources in the future? Can you identify specific decisions or investments made with that understanding?
14. Did you ever tell my client that he or she would benefit from your income, assets, or retirement resources? When and where did those conversations occur, and were any third parties present?
15. What statements did you make to my client about sharing income, assets, or retirement accounts? Did my client rely on those statements in making contributions to the household or property?
16. What statements did my client make to you about pooling or sharing resources? How did you respond to those statements?

17. How did you and my client handle large purchases such as vehicles, vacations, or home improvements? Were those purchases treated as joint investments regardless of legal title?
18. Were those purchases intended to benefit both you and my client equally? Did you ever indicate that my client should not expect to share in those benefits?
19. At the time your relationship with my client ended, what assets or accounts remained that you both contributed to? Did you take any steps to exclude my client from access to or benefit of those assets?
20. After the relationship ended, did you retain property or accounts that my client helped to pay for or maintain? On what basis do you claim sole ownership of those assets?
21. Did you and my client ever maintain a joint bank account? If so, how was that account used and who contributed to it?
22. Did you ever keep written records or ledgers reflecting how much each of you contributed to household or property expenses?
23. Were credit cards ever used jointly during the relationship? Whose name appeared on those accounts?
24. Did you or my client pay off debts or liabilities on behalf of the other during the relationship? Please identify specific examples.
25. Did you and my client ever file joint tax returns or otherwise present yourselves as a financial unit for tax purposes?
26. When property or assets were purchased during the relationship, what discussions occurred about whether they would belong to one or both of you?
27. Did you and my client ever discuss drafting a cohabitation agreement or any written arrangement regarding property rights?
28. Did you make any representations to family or friends about jointly owning assets with my client?
29. Did you ever assure my client that contributions he or she made would be protected if the relationship ended?
30. Were there discussions about inheriting each other's property or including one another in wills or estate plans?
31. Did you and my client make lifestyle choices, such as vacations or home improvements, based on an assumption of shared financial security?

32. Were major purchases during the relationship made with the expectation that both of you would benefit equally from them?
33. Did you ever rely on my client's income or resources to allow you to save or invest your own funds?
34. Did my client ever forego employment or career opportunities based on the understanding that your financial resources would support both of you?
35. Did you encourage or rely upon my client to handle household responsibilities in order to free you to pursue professional or financial goals?
36. What specific retirement accounts did you hold during the relationship, and did you discuss those accounts with my client?
37. Did you ever assure my client that your retirement accounts or pensions would be shared in some fashion when you retired together?
38. Did you and my client ever review financial statements, investment accounts, or retirement plans together?
39. Did you encourage my client to contribute to your retirement planning, either financially or through household support, so that you could save more?
40. Did you ever discourage my client from setting aside funds independently because you assured him or her that you would retire together on your combined wealth?

V. CONCLUSION

In conclusion, legal and equitable claims arising out of relationships between unmarried partners present complex and unpredictable challenges. Unlike divorce actions, these cases lack statutory presumptions and instead require fact-intensive proof of contributions, agreements, and intent, often through costly and contentious discovery. Outcomes are rarely equal, and remedies are highly dependent on the specific facts of each case. As such, practitioners must approach these matters with careful planning, strategic discovery, and a clear understanding of both civil procedure and equitable doctrines. Should you have any questions or wish to discuss these issues further, please feel free to reach out to the presenters, Evan Mayer and Christopher Krimmer, for clarification or guidance on the topics addressed in this conference.